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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,812	10/11/2005	Guido F. Smoorenburg	62367-393307	3611
27510	7590	02/01/2011		
KILPATRICK TOWNSEND & STOCKTON LLP			EXAMINER	
1100 Peachtree Street			HOLMES, REX R	
Suite 2800				
ATLANTA, GA 30309			ART UNIT	PAPER NUMBER
			3762	
			NOTIFICATION DATE	DELIVERY MODE
			02/01/2011	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipefiling@kilpatrickstockton.com

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**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/518,812

**Applicant(s)**

SMOORENBURG, GUIDO F.

**Examiner**

REX HOLMES

**Art Unit**

3762

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 10 January 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/Niketa I. Patel/  
Supervisory Patent Examiner, Art Unit 3762

/R. H./  
Examiner, Art Unit 3762

Continuation of 11, does NOT place the application in condition for allowance because: The Applicant argues that the 101 and 112 rejections should be withdrawn as claim 39 discloses sufficient limitations for an apparatus and therefore the rejections are moot. The Examiner respectfully disagrees. While the claim states it is an apparatus claim, it provides no apparatus limitations and only provides method steps to be performed by the apparatus. It is noted that the claims fail to provide elements to perform the claimed steps. Therefore as noted in the prior rejection, it is suggested to include device elements to perform the listed steps in the claim. Regarding the 103 rejection, the Applicant argues that the Faltys '861 reference fails to disclose or render obvious measuring a first threshold for each channel of a subset of plurality of channels and determine a current level setting for each channel of the plurality of channels. The examiner respectfully disagrees. Faltys 861 discloses the claimed invention but fails to disclose obtaining a response for a plurality of channels and adjust the current level setting for a plurality of channels. However, Faltys 247 discloses a multi-channel stimulator that establishes a speech strategy that is comprised of the polarity, magnitude, location (which electrode pair receives the stimulation current), and timing (when the stimulation current is applied to the electrode pair) of the stimulation current that is generated by the ICS (Col. 9, ll. 51-54) and adjusts based on all channels or a subset of channels (Col. 32, ll. 27-36). It then takes the speech processing strategy which contains the stimulation information for each channel in the array and supplies stimulation to the array based on the values of the initial stimulation strategy, it then receives a feedback signal in response to the initial stimulation, it then adjusts the stimulation channels until the patient senses audio signals correctly (Col. 4, ll. 14-36; Col. 21, line 33 to Col. 22, line 29). Faltys '247 discloses the individual adjustment for each channel. Therefore the combinations teaches the claimed invention.